IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

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CRIMINAL APPEAL NO.117-SB OF 1994

Decided on : April 25, 2007

Lakha Singh alias Lakhvinder Singh **...**Appellant

VERSUS

The State of Punjab **...**Respondent

CORAM :
HON'BLE MR.JUSTICE A.N.JINDAL

Present: None for the appellant.

Mr.GPS Gill, Assistant Advocate General
for the respondent – State of Punjab.

A.N.JINDAL, J.-

Accused – appellant Lakha Singh alias Lakhvinder Singh (hereinafter referred to as the accused) has challenged the conviction and sentence awarded against him vide judgment dated 1.2.1994 by Sessions Judge, Patiala under Section 326 of the Indian Penal Code (hereinafter referred to as IPC). Consequent to the trial, he was sentenced to undergo rigorous imprisonment for a period of four years and to pay fine of Rs.100/-, in default, to undergo further rigorous imprisonment for one year.

The factual matrix of the case is that on 29.5.1990 at 7.15 a.m, the complainant Khushal Singh (hereinafter referred to as the complainant) was standing in front of his house on the road. In the meantime, Jagir Singh

son of Kulwant Singh, caste Bhatra, resident of Yadvindra Colony, Patiala came there on his rickshaw. Meanwhile, Lakha Singh, accused of the same caste, armed with a sota and bearing a Gatra fitted with small kirpan around his body, also appeared at the scene. On account of the confrontation between them, the accused – appellant took out his kirpan and inflicted blows on the left leg of Jagir Singh. The accused – appellant had also caused injuries with his sota and fled away after leaving his rickshaw at the spot. The incident was also witnessed by Jathedar Rawail Singh.

The motive behind the occurrence was that Jagir Singh (deceased) was married with Shanti daughter of Mohan Singh. Meena, sister of Shanti was engaged with the accused. However, the accused suspected that Jagir Singh had illicit relations with his fiancee Meena.

On the aforesaid statement Ex.PA, recorded at 9.40 a.m, by Sub Inspector Narinder Singh, case First Information Report Ex.PA/2 was registered at Police Station Civil Lines, Patiala at 10.05 a.m. Jagir Singh succumbed to his injuries in the hospital. Sub Inspector Narinder Singh visited the place of occurrence, prepared the rough site plan Ex.PR with correct marginal notes, lifted the blood stained earth and recorded the statements of the witnesses. While going to the hospital, he took into possession, the clothes of the deceased and the rickshaw. The accused was apprehended on 13.6.1990. Blood stained Kirpan Ex.P1 fitted in Gatra Ex.P2 was got recovered from him in pursuance of the disclosure statement Ex.PH, made by him under Section 27 of the Evidence Act. He also

collected the post mortem report.

The completion of the investigation was followed by the challan under Section 302 IPC presented against the accused. He was charge-sheeted accordingly, to which he pleaded not guilty and claimed trial.

On commencement of the trial, prosecution examined PW1 Khushal Singh – complainant, PW2 Rawail Singh, PW3 Dr.Jatinder Kumar, PW4 Sukhwinder Kumar Head Constable, PW5 Harbhajan Singh Assistant Sub Inspector, PW6 Indresh Khanna draftsman and PW10 Gurdip Singh Deputy Superintendent of Police. PW7 MHC Bhupinder Singh, PW8 Constable Pritpal Singh and PW9 Mehar Chand tendered into evidence their affidavits Ex.PN, PO and PQ, respectively. After tendering into evidence the reports of the Chemical Examiner and Serologist, the prosecution closed its evidence.

When examined under Section 313 of the Code of Criminal Procedure, the accused denied all the incriminating circumstances appearing against him during prosecution evidence and pleaded his false implication.

Ultimately, the trial ended in conviction. Hence, this appeal.

I have heard Shri GPS Gill, Assistant Advocate General appearing for the respondent – State of Punjab and have scrutinised the

records carefully.

The presence of PW1 Khushal Singh and PW2 Rawail Singh, at the spot, at the relevant time, cannot be doubted. Khushal Singh was standing in front of his house, when Jagir Singh (deceased) came there while driving his rickshaw. PW1 Khushal has specifically stated that accused started quarreling with the deceased and then caused injuries on his legs and the thigh. The substantive statement made by Khushal Singh is consistent with the statement Ex.PA, as well as the Inquest Report prepared immediately after the occurrence. Despite the scorching cross-examination, this witness did not deviate from his version. His ocular version stands corroborated by medical evidence, as well as by Rawail Singh PW2. The testimony of PW2 Rawail Singh cannot be discarded merely for the reason that he was somewhat related to the deceased. There is no hard and fast rule that the relationship is sufficient ground to discard the testimony of a witness, but in such cases, the testimony is required to be scrutinised with more care and caution and if it finds sufficient corroboration from other evidence, then relationship should not be made a ground to throw away his testimony. Having scrutinised his evidence on the touchstone of the human behaviour and preponderance of probabilities, I conclude that presence of this witness cannot be doubted, especially when his testimony stands corroborated by medical evidence and the recovery of weapon of the offence.

The First Information Report in this case is also very prompt as

occurrence took place at 7.15 a.m, while statement Ex.PA, on the basis of which First Information Report Ex.PA/2 was recorded by Sub Inspector Narinder Singh at 10.05 a.m, on the statement made by Khushal Singh in the hospital at 9.40 a.m. The special report reached the Ilaqa Magistrate at 2.50 p.m. Thus, the circumstances speak to the volumes that Investigating Officer recorded the First Information Report without wasting any time and handled the investigation very carefully. As such, I have no reason to disbelieve the prosecution version, specifically in the absence of any plausible defence alleged or proved by the accused.

No interference in the impugned judgment, whereby the accused has been convicted under Section 326 IPC, is warranted, because the deceased was not inflicted any such injury on the vital part of the body. Cutting out the major artery of the leg was the cause of death of Jagir Singh. PW3 Dr.Jatinder Kumar categorically clarified that, had prompt medical aid been given, the injured would have survived. The genesis of occurrence was sudden quarrel, on account of the fact that accused was suspecting illicit relations of the deceased with his would be wife. Parts chosen by him to cause him injuries also reflects that the accused never intended to take his life. Thus, to my mind, the Trial Court was justified in holding that the offence committed by the accused fell within the purview of Section 326 IPC.

Now coming to the quantum of sentence, the accused caused grievous injuries to Jagir Singh out of fury on the basis of misplaced

suspicion and as a consequence of which, he died. The delay in decision of the appeal in this court cannot be treated as mitigating circumstance to wipe out the sentence awarded to him. To my mind, the sentence of four years awarded to him is already on the lower side.

In the wake of the aforesaid discussion, I do not find any merit in the appeal, which is hereby dismissed.

April 25, 2007 (A.N.JINDAL)
gian JUDGE

To be Referred to Reporter - **Yes/ No**